IN THE UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF GEORGIA MACON DIVISION

DARRELL E. BROWN, SR.,)
Plaintiff,)
V.) CIVIL ACTION NO. 5:11-CV-168 (MTT)
ROBERT TOOLE,)
Defendant.)))
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ORDER

This matter is before the Court on the Order and Recommendation (Doc. 5) of United States Magistrate Judge Stephen Hyles. The Magistrate Judge reviewed this case pursuant to 28 U.S.C. §§ 636 and 1915A. The Magistrate Judge recommends dismissing the case because one of the Plaintiff's claims is barred by the statute of limitations, and the other fails to state a claim upon which relief can be granted.

The Plaintiff filed an Objection to the Recommendation (Doc. 6). In his Objection, the Plaintiff disputes that his first claim is barred by the statute of limitations. The Plaintiff's first claim is that he was acquitted by a jury in May 2004, yet the judge sentenced him to 25 years in jail (and, according to the Plaintiff, this sentence was upheld on appeal). This § 1983 claim was filed in May 2011, five years after the two-year statute of limitations ran in 2006. The Plaintiff argues in his Objection that the statute of limitations should be measured from July 1, 2009, the date when a change in the law regarding an element of the offense of kidnapping went into effect. However, because the Plaintiff claims that he was acquitted by a jury, any change in the law regarding a crime he was never convicted of is irrelevant.

Pursuant to 28 U.S.C. § 636(b)(1), the Court has thoroughly considered the Plaintiff's Objection and has made a de novo determination of the portions of the Recommendation to which Plaintiff objects. The Court accepts and adopts the findings, conclusions and recommendations of the Magistrate Judge in its Recommendation (Doc.

5). Thus, the Plaintiff's case is **DISMISSED**.

SO ORDERED, this the 19th day of August, 2011.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT

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